

111TH CONGRESS  
1ST SESSION

# S. 637

To authorize the construction of the Dry-Redwater Regional Water Authority System in the State of Montana and a portion of McKenzie County, North Dakota, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 18, 2009

Mr. BAUCUS (for himself and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To authorize the construction of the Dry-Redwater Regional Water Authority System in the State of Montana and a portion of McKenzie County, North Dakota, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Dry-Redwater Re-

5       gional Water Authority System Act of 2009”.

6       **SEC. 2. FINDINGS; PURPOSE.**

7       (a) FINDINGS.—Congress finds that—

1           (1) there are insufficient available supplies of  
 2       safe water to meet the minimum health and safety  
 3       standards of the citizens of—

4                   (A) Dawson, Garfield, McCone, Prairie,  
 5       and Richland Counties of the State; and

6                   (B) McKenzie County, North Dakota;

7           (2) McCone and Garfield Counties of the State  
 8       were—

9                   (A) directly and physically impacted when  
 10      the Fort Peck Dam was constructed; and

11                  (B) to receive certain impact benefits as a  
 12      result of the Pick-Sloan program; and

13           (3) the water that is contained in the Fort Peck  
 14      Dam reservoir is managed for purposes relating to—

15                  (A) flood control;

16                  (B) the production of hydroelectric power;

17                  (C) irrigation;

18                  (D) the maintenance of a public water sup-  
 19      ply;

20                  (E) the conservation of fish and wildlife;

21                  (F) recreation; and

22                  (G) the improvement of water quality.

23       (b) PURPOSE.—The purpose of this Act is to ensure  
 24      a safe and adequate municipal, rural, and industrial water  
 25      supply for the citizens of—

1           (1) Dawson, Garfield, McCone, Prairie, and  
2           Richland Counties of the State; and

3           (2) McKenzie County, North Dakota.

4 **SEC. 3. DEFINITIONS.**

5           In this Act:

6           (1) ADMINISTRATOR.—The term “Adminis-  
7           trator” means the Administrator of the Western  
8           Area Power Administration.

9           (2) AUTHORITY.—The term “Authority”  
10          means—

11                (A) the Dry-Redwater Regional Water Au-  
12                thority, which is a publicly owned nonprofit  
13                water authority formed in accordance with  
14                Mont. Code Ann. § 75–6–302 (2007); and

15                (B) any nonprofit successor entity.

16           (3) FIRM POWER RATE.—The term “firm power  
17           rate” means the rate charged by the Administrator  
18           for the Pick-Sloan Missouri Basin Program—East-  
19           ern Division.

20           (4) PICK-SLOAN PROGRAM.—The term “Pick-  
21           Sloan program” means the Pick-Sloan Missouri  
22           River Basin Program (authorized by section 9 of the  
23           Act of December 22, 1944 (commonly known as the  
24           “Flood Control Act of 1944”) (58 Stat. 891, chapter  
25           665)).

1           (5) SECRETARY.—The term “Secretary” means  
2           the Secretary of the Interior.

3           (6) STATE.—The term “State” means the State  
4           of Montana.

5           (7) WATER SYSTEM.—The term “Water Sys-  
6           tem” means the Dry-Redwater Regional Water Au-  
7           thority System authorized under section 4 for—

8                       (A) Dawson, Garfield, McCone, Prairie,  
9                       and Richland Counties of the State; and

10                      (B) McKenzie County, North Dakota.

11 **SEC. 4. DRY-REDWATER REGIONAL WATER AUTHORITY SYS-**  
12 **TEM.**

13           (a) COOPERATIVE AGREEMENT.—

14                      (1) IN GENERAL.—The Secretary shall enter  
15           into a cooperative agreement with the Authority to  
16           provide Federal assistance for the planning, design,  
17           and construction of the Water System.

18                      (2) REQUIREMENTS.—A cooperative agreement  
19           entered into under paragraph (1) shall specify, in a  
20           manner that is acceptable to the Secretary and the  
21           Authority—

22                               (A) the responsibilities of each party to the  
23           cooperative agreement relating to the Water  
24           System, including—

25                                       (i) the final engineering report;

1 (ii) an environmental and cultural re-  
2 source study;

3 (iii) engineering and design;

4 (iv) construction;

5 (v) water conservation measures; and

6 (vi) administration of contracts relat-  
7 ing to the performance of the activities de-  
8 scribed in clauses (i) through (v);

9 (B) any procedure or requirement relating  
10 to—

11 (i) the carrying out of each activity  
12 described in subparagraph (A); and

13 (ii) the approval and acceptance of the  
14 design and construction of the Water Sys-  
15 tem; and

16 (C) the rights, responsibilities, and liabil-  
17 ities of each party to the cooperative agreement.

18 (b) USE OF FEDERAL FUNDS.—

19 (1) FEDERAL SHARE.—

20 (A) IN GENERAL.—The Federal share of  
21 the costs relating to the planning, design, and  
22 construction of the Water System shall not ex-  
23 ceed 75 percent of the total cost of the Water  
24 System.

1 (B) LIMITATION.—Amounts made avail-  
 2 able under subparagraph (A) shall not be re-  
 3 turnable or reimbursable under the reclamation  
 4 laws.

5 (2) COMPLIANCE WITH COOPERATIVE AGREE-  
 6 MENT.—Federal funds made available to carry out  
 7 this section shall be obligated and expended in ac-  
 8 cordance with a cooperative agreement entered into  
 9 by the Secretary under subsection (a)(1).

10 (c) COMPONENTS.—Components of the Water Sys-  
 11 tem facilities for which Federal funds may be obligated  
 12 and expended under this section shall include—

13 (1) facilities relating to—

14 (A) water intake;

15 (B) water pumping;

16 (C) water treatment; and

17 (D) water storage;

18 (2) transmission pipelines and pumping sta-  
 19 tions;

20 (3) appurtenant buildings, maintenance equip-  
 21 ment, and access roads;

22 (4) any interconnection facility that connects a  
 23 pipeline of the Water System to a pipeline of a pub-  
 24 lic water system;

1           (5) distribution, pumping, and storage facilities  
2   that—

3           (A) serve the needs of citizens who use  
4   public water systems;

5           (B) are in existence on the date of enact-  
6   ment of this Act; and

7           (C) may be purchased, improved, and re-  
8   paired in accordance with a cooperative agree-  
9   ment entered into by the Secretary under sub-  
10   section (a)(1);

11          (6) electrical power transmission and distribu-  
12   tion facilities required for the operation and mainte-  
13   nance of the Water System;

14          (7) any other facility or service required for the  
15   development of a rural water distribution system, as  
16   determined by the Secretary; and

17          (8) any property or property right required for  
18   the construction or operation of a facility described  
19   in this subsection.

20   (d) SERVICE AREA.—The service area of the Water  
21   System shall be—

22          (1) the area of Garfield and McCone Counties  
23   in the State;

24          (2) the area west of the Yellowstone River in  
25   Dawson and Richland Counties in the State;

1           (3) the area including, and north of, Township  
2       15N in Prairie County in the State; and

3           (4) the portion of McKenzie County, North Da-  
4       kota, that includes all land that is located west of  
5       the Yellowstone River in the State of North Dakota.

6       (e) LIMITATION ON AVAILABILITY OF CONSTRUCTION  
7 FUNDS.—The Secretary shall not obligate funds for con-  
8 struction of the Water System until the date—

9           (1) on which the Water System complies with  
10       each requirement under the National Environmental  
11       Policy Act of 1969 (42 U.S.C. 4321 et seq.);

12          (2) that is 90 days after the date of receipt by  
13       Congress of the final engineering report described in  
14       subsection (a)(2)(A)(i) that is approved by the Sec-  
15       retary; and

16          (3) on which the Secretary publishes a written  
17       finding that the water conservation plan developed  
18       pursuant to section 6 contains water conservation  
19       measures for the operation of the Water System that  
20       are—

21               (A) prudent;

22               (B) reasonable; and

23               (C) economically and financially feasible.

24       (f) LIMITATION ON USE OF FEDERAL FUNDS.—



1           (1) IN GENERAL.—Any cost relating to the op-  
 2           eration, maintenance, or replacement of the Water  
 3           System—

4                   (A) shall not be a Federal responsibility;  
 5                   and

6                   (B) shall be paid by the Water System.

7           (2) FEDERAL FUNDS.—The Secretary shall not  
 8           obligate or expend Federal funds for the operation,  
 9           maintenance, or replacement of the Water System.

10          (g) TITLE TO THE WATER SYSTEM.—Title to the  
 11          Water System shall be held by the Authority.

12      **SEC. 5. USE OF POWER FROM PICK-SLOAN PROGRAM.**

13          (a) FINDINGS.—Congress finds that McCone and  
 14          Garfield Counties in the State were designated—

15                  (1) as impact counties during the period in  
 16          which the Fort Peck Dam was constructed; and

17                  (2) to receive impact mitigation benefits in ac-  
 18          cordance with the Pick-Sloan program.

19          (b) AVAILABILITY OF POWER.—

20                  (1) IN GENERAL.—Subject to paragraph (2),  
 21          the Administrator shall make available to the Water  
 22          System a quantity of power required to meet the  
 23          pumping and incidental operation requirements of  
 24          the Water System—

25                          (A) from the water intake facilities; and

1 (B) through—

2 (i) the water treatment facilities; and

3 (ii) all first water distribution pump-  
4 ing facilities.

5 (2) ELIGIBILITY.—The Water System shall be  
6 eligible to receive power under paragraph (1) if the  
7 Water System—

8 (A) operates on a not-for-profit basis; and

9 (B) is constructed pursuant to a coopera-  
10 tive agreement entered into by the Secretary  
11 under section 4(a)(1).

12 (3) RATE.—The Administrator shall establish  
13 the cost of the power described in paragraph (1) at  
14 the firm power rate.

15 (4) RECOVERY OF EXPENSES.—The Adminis-  
16 trator shall recover the costs associated with the  
17 quantity of power used by the Authority under para-  
18 graph (1).

19 (5) RESPONSIBILITY FOR EXPENSES.—The Au-  
20 thority shall be responsible for the payment of the  
21 costs described in paragraph (4).

22 **SEC. 6. WATER CONSERVATION PLAN.**

23 (a) IN GENERAL.—The Authority shall develop a  
24 water conservation plan containing—

1           (1) a description of water conservation objec-  
2       tives;

3           (2) a description of appropriate water conserva-  
4       tion measures; and

5           (3) a time schedule for carrying out the meas-  
6       ures described in paragraph (2) and this Act to meet  
7       the water conservation objectives described in para-  
8       graph (1).

9       (b) DESIGN REQUIREMENT.—The water conservation  
10   plan developed under subsection (a) shall be designed to  
11   ensure that users of water provided by the Water System  
12   will use the best practical technology and management  
13   techniques to conserve water.

14       (c) PUBLIC PARTICIPATION.—Section 210(c) of the  
15   Reclamation Reform Act of 1982 (43 U.S.C. 390jj(c))  
16   shall apply to each activity carried out under this Act.

17   **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

18       (a) WATER SYSTEM.—There is authorized to be ap-  
19   propriated to carry out the planning, design, and construc-  
20   tion of the Water System \$115,116,000 for the period of  
21   fiscal years 2010 through 2020.

22       (b) COST INDEXING.—The amount authorized to be  
23   appropriated under subsection (a) may be increased or de-  
24   creased in accordance with ordinary fluctuations in devel-  
25   opment costs incurred after January 1, 2008, as indicated

- 1 by any available engineering cost indices applicable to con-
- 2 struction activities that are similar to the construction of
- 3 the Water System.

